IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7859 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATYASHANKER COOP HOUSING STY LTD

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner No. 1
MR LR PUJARI AGP for Respondent No. 1
MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-06/09/2002

C.A.V. JUDGEMENT

1. By means of this petition, the petitioner has sought for quashing and setting aside the impugned order

dated 21-3-2000 passed by the Principal Secretary, Government of Gujarat, Urban Development and Urban Housing Development Department and consequential directions to the respondents to allot the other land as per communication dated 30-9-1994 at Annexure-F to the petition and/OR to allot the land to the petitioner society so as to deficit the land admeasuring 1995 sq. mtrs. from the land reserved for the said purpose and to reduce the area of land to be taken away from petitioner society to the extent of 20% to 22% of the total land held by the petitioner society.

2. The petitioner society is registered under the provisions of the Gujarat Cooperative Societies Act, 1961. The petitioner society owned and possessed the land bearing Survey No. 110 which was given Final Plot No. 18 on the finalization of the Town Planning Scheme under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. Originally, the land bearing Survey No. 110 was admeasuring 20639 sq. mtrs., on finalization of the town planning scheme, the said survey No. 110 was given final plot no. 18 and the petitioner was allotted the land admeasuring 14420 sq. mtrs.. in lieu of the original survey no. 110 admeasuring 20639 sq. mtrs. Out of the land allotted to the land to the petitioner society, 245 sq. mtrs. of land was covered by the existing "Naliya" and road. Thus, the petitioner - society was given in fact only 14175 sq. mtrs. in lieu of original survey No. 110 admeasuring 20639 sq. mtrs.

3. The question was as to how much area should be deducted from the original land of the land holder. One Manilaxmi Cooperative Housing Society raised this question before the respondent no. 2 - Ahmedabad Urban Development Authority (for short "AUDA"). The respondent no.2 vide letter dated 19-4-1991 recommended to the respondent no. 1 - State Government that deduction should ordinarily be made to the extent of 22%. It is mentioned therein that Thaltej Town Planning Scheme No. 2 primarily has been approved by the Government and is in force at present. As proposed therein, it appeared that that applicant society had suffered injustice in the matter of deduction. In the proposal of the scheme ordinarily extent of deduction in open land is 20% to 22%. Whereas, in the case of the that society, deduction was made to the extent of 30% and that was found to be excessive. At the meeting of the Board held on 21-2-1980 it was decided to vary the scheme and variation was proposed to be made recommending State Government to finalise T.P. Scheme to reduce reduction from 30% to 22%

to 25% under Section 17 (1) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the "Act 1976" for brevity and convenience). The similar question was raised in a writ petition being Special Civil Application No. 2171 of 1979 filed before this Court and before the Division Bench of this Court learned counsel for the AUDA made a statement that while finalizing the town planning scheme, the area of the land will be deducted not exceeding from 20% to 22% as per the Resolution dated 21-2-1980 as mentioned by this Court in the order dated 29-1-1990. The respondent no. 2 passed another resolution on the question and it had decided not to make ex-proprietary deduction from the lands of individuals.

4. As soon as the petitioner society came to know that a large portion of the land admeasuring 6464 sq. mtrs. was proposed to be taken away from the land belonging to it and the petitioner society has been given land admeasuring 14175 sq. mtrs. including the land of nalia and road admeasuring 295 sq. mtrs., the petitioner society made a representation to the respondent no.1 requesting him not to take away such huge portion of his land. The respondent no. 2 vide letter dated 10-11-1994 informed the petitioner that the request made by it cannot be accepted. Thereafter, another representation was made by the petitioner to the respondent no. 2 to reconsider its earlier decision in light of its policy framed by it and to allot final plot as per the request made by the petitioner but the same was not responded by the respondents and hence the petitioner had approached this Court by way of filing Special Civil Application No. 5945 of 1995 for redressal of its grievances. This Court vide its order dated 18-1-1996 permitted the petitioner to withdraw the said petition giving liberty to the petitioner to make a representation to the respondent authority as the petitioner society has suffered loss of land to the extent of 32% in stead of 20% of the land as per the policy of the respondents. As per the order of this Court, the petitioner made the detailed representation to the respondent no. 1 on 27-4-1996 with a copy to the respondent no.2 and concerned Town Planning Officer. The Town Planning Officer informed the petitioner society by letter dated 6-4-1996 that nothing could be done in the matter because the Town Planning Scheme could not be varied again as final plot no. 1 is not included in the draft Town Planning Scheme. The State Government informed the petitioner society vide letter dated 26-7-1996 that the decision rendered by the High Court in Special Civil Application 594 of 1995, the petitioner is required to make representation to the

respondent no. 2. The petitioner society has already made detailed representation to AUDA on 27-4-1996 but nothing was done by the respondents and hence the petitioner society approached the Hon'ble Minister for Urban Development Development in respect of its grievances. The said Minister had addressed the letter to the Additional Chief Secretary, Urban Development Department, directing him to do the needful in the matter and the petitioner society was informed by the letter dated 2-1-1997. Inspite of the letter of request to the respondent no.2 by the said Minister, nothing was done by the respondents. The petitioner made again a representation to the same Minister vide letter dated 19-7-1997. The petitioner thereafter made another representation dated 15-2-1999 to the Town Planning Officer requesting that variation can be made u/s 71 of the Town Planning Act and the grievances of the petitioner can be redressed by allotting the portion of the land belonging to the AUDA in lieu of the land taken away by the respondents from the petitioner society.

5. Inspite of the aforesaid repeated representations, the respondents have done nothing in favour of the petitioner society. Hence, the petitioner society has to again approach this Court by filing writ petition being Special Civil Application No. 2716 of 1999 for appropriate reliefs. This Court, after hearing the learned counsel for the parties, disposed that petition vide order dated 6-5-1999 directing the Town Planning Officer to consider the grievances of the petitioner and to decide the representation of the petitioners in accordance with law as well as in light of the decision of this Court taken in Special Civil Application No. 2179 of 1979, within a period of two months from the date presentation of a certified copy of the said order dated 6-5-1999 along with a fresh representation. Accordingly, pursuant to the order dated 6-5-1999, the petitioner made a fresh detailed representation dated 13-5-1999 to the Secretary, Urban Development and Urban Housing Department, with the copy to the Chief Town Planner, State of Gujarat and the Town Planning Officer concerned. Thereafter, the petitioner society received a letter from the respondent no. 2 on 14-10-1999 that nothing was required to be done on part of the respondent no. 2. Meanwhile, the respondent no. 1 had filed Review Application No. 1607/99 for review of the earlier order dated 6-5-1999. but the said Review Application was rejected on 10-9-1999.

6. The petitioner's representation was not decided as per the directions of this Court, the petitioner

sought clarification by way of filing Civil Misc. Application No. 2464/99 and this Court vide order dated 29-11-1999 modified its earlier order directing the Secretary, Urban Development and Urban Housing Development Department himself or the Officer authorized by him to decide the representation of the petitioner or to depute some other person authorized by him to decide the representation of the petitioner. Thereafter, again the petitioner made another representation on 7-12-1999 to the respondent State Government and the Chief Town Planner as per the order of this Court and pointed out therein the aforesaid changes and annexed all the copies of the relevant documents to the said representation and sent to the State Government and the Chief Town Planner as per the order of this Court.

7. The respondent Principal Secretary to the Government of Gujarat, Urban Development and Urban Housing Development Department, rejected the representations of the petitioner mainly on the ground that in Special Civil Application No. 2171 of 1979 compromise was arrived at between the petitioner society of that petition and the appropriate authority of the respondents outside the Court and it was the case of mutual understanding and compromise under specific circumstances between the petitioner and the respondents authorities. Hence, the decision of this Court in Spl. C.A. No. 2171/79 is not applicable in the present case. It is also stated that by virtue of the town planning scheme 6216 sq. mtrs. of land i.e. approximately 30.73 per cent was deducted from the land under reference. While the petitioner society stated that 32% of land has been deducted and that prima facie is incorrect. The third ground for rejection of the petitioner's representation is that there are about 19 cases in which more than 30% land by virtue of the town planning scheme was deducted from the respective lands stated falling in the schemes concerned. Average 25% to 35% land is being deducted by virtue of the town planning scheme. I have carefully considered the grounds of rejection of the petitioners representation by the impugned order of the respondent no. 1, the submissions made by the rival parties and relevant papers on record. From the order dated 29-1-1990 passed by the Division Bench of this Court in Spl. C.A. No. 2171/79 it does not appear that some compromise was arrived at between the petitioner society and the concerned authorities of the respondents outside the Court. Therefore, it does not appear that there was any understanding between the petitioner society of that petition and the respondents authorities. Moreover the Board of AUDa passed a resolution dated

21-2-1980 and took a decision as appears from the Division Bench order dated 29-1-1990 rendered in Special Civil Application No. 2171 of 1979 which reads as udner :

> "Mr. S.V. Vakil, learned counsel for Ahmedabad Urban Development Authority (Authority for short) states that the authority had by its Board Resolution No. 9 of 1979 passed at its 22nd meeting held on 21-1-1980 resolved to recommend to the State Government to recommend to the Town Planning Officer of Town Planning Scheme, No. 4, 5 and 6 of village Vejalpur to reduce reduction of original plot area from 30% as originally proposed to 22 to 25 percent while finalising the scheme by the Town Planning Officer and that the Government should follow the same while sanctioning the scheme. That resolution was to be followed in the said writ petition as per learned counsel for AUDa."

As such, the Principal Secretary, of the respondent no. 1 was misdirected and misled himself either through the record or by some authority. Though there nothing appears from the aforesaid order itself that the writ petition being Special Civil Application No. 2171/79 was compromised outside the Court even some compromise was arrived at between the parties but that was as per the resolution dated 21-2-1980 of the Board of AUDA. As such, the Principal Secretary, Urban Development and Urban Housing Development Department has committed a manifest error on the face of the record in holding that the decision of the Division Bench of this Court in Spl. C.A. No. 2179/79 is not applicable to the facts and circumstances of the present case. The Principal Secretary, - respondent No. 1 also erroneously held that the petitioner's statement regarding deduction of land is incorrect because the land admeasuring 245 sq. mtrs. of Naliya and Road has also been included in the land allotted to the petitioner which is liable to be excluded. The authorities of the respondents ought to have rightly calculated on the basis of the figures on record. The authorities should not have rejected the entire claim of the petitioner - society on the basis of the differential decimal calculation made by the petitioner society.

8. Learned A.G.P. appearing on behalf of the respondents could not show any rules, guidelines or principles for deduction of land from 25% to 30% or 40% or 60%, or more particularly when the petitioner society

showed the policy of the respondents for deduction of land at the rate 20% to 22% and on the basis of the statement made by the advocate of the authority about deduction of land ranges from 20% to 22% in writ petition being Spl. C.A. No. 2171/79. Another reason is that there are about 19 cases in which more than 30% of land by virtue of the town planning scheme has been deducted from the respective land situated within the Town Planning Scheme, Vastrapur-I. If some illegality or mistake has been committed by the authority or competent court, that does not mean that it is a rule of law and that should be perpetuated and applicable in all cases and that mistake or illegality should continue for ever. The policy of the respondents is to take 20% to 22% land for public purposes out of the original land. Thus, the reasons recorded by the Principal - Secretary respondent no.1 for rejecting the petitioner's representation are illegal, irrational, baseless, erroneous and contrary to their own policy dated 15-4-1991 and resolution No. 121/94-95 and Resolution No. 9 dated 21-2-1980, whereby the policy is framed by the Government to deduct 23% of the original land which was brought to the notice of this Court only then the order of the Division Bench of this Court came to be passed in Spl. C.A. No. 2179/79 on 29-1-1990. As such, the order dated 21-3-2000 passed by the Principal Secretary of the respondent no. 1 is not sustainable in the eye of law and deserves to be quashed and set aside.

9. Now, the question arises as to what order should be passed in respect of the land in dispute in this petition particularly the adamant view of the concerned authorities of the respondent is, in any case, not to consider the claim of the petitioner society in spite of more than 8 representations made by the petitioners pursuant to several orders of this Court as well as orders of the Minister concerned even before finalization of Town Planning Scheme and the respondent authorities have failed to exercise this power as per their own policy and directions of this Court at several times.

10. Learned counsel for the petitioner - society contended that if an authority has failed to exercise its power as per policy or decision of this Court, mandatary writ can be issued to the authority to give relief to the aggrieved person and relied on the decision of the Supreme Court in the case of the Comptroller and Auditor General of India, Gian Prakash, New Delhi and another Vs. K.S. Jagannathan and another, reported in AIR 1987 Supreme Court 537, wherein it has been held as under :

"The High Courts exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon if by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant consideration or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give discretions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

11. I find full force as well as substance in the contention raised by the learned counsel for the petitioner - society that even after finalization of T.P. Scheme this Court can pass appropriate direction where the authority has failed to exercise its power and this Court has also power to examine and evaluate the orders passed by the authority and pass appropriate, just and proper order warranting in the facts and circumstances of the case.

12. I do not final any substance in this contention of the learned A.G.P. that after finalization of the Town Planning Scheme, the Court has no jurisdiction to interfere with the T.P. Scheme which has became part of the Statute inasmuch as in a decision of the Division Bench of this Court in the case of Rameshchandra Shamjibhai Ranga Vs. State of Gujarat, reported in 2000 (4) G.L.R. 2777, the relevant portion of the judgment is reproduced below.

"The provisions of Sec. 4 having an effect of abatement of pending proceedings in relation to

an 'order made or purported to be made' under the Repealed Act, cannot be construed to completely take away the power of the Courts, tribunals and authorities as judicial and quasi-judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of repealing Act on the rights and liabilities of the land owners and the State."

13. The petitioner society has been making objections and challenges the validity of of deduction even prior to finalization of the T.P. Scheme. This Court passed the interim order dated 17-7-2002 whereby this Court granted ad-interim relief in terms of para 32 (B) of the petition, which was confirmed and made to continue till final disposal of this petition. Para 32 (B) of the memo of present petition reads as under :

"32 (B) : Pending admission, hearing and final disposal of this petition, this Honourable Court may be pleased to issue an injunction restraining the respondents from in any manner disposing of the land to the extent of 2000 sq. mtrs. out of the lands reserved by AUDA for such purpose."

The respondents have not moved any application for vacation of the interim relief granted by this Court on the ground that they have no land to allot to the petitioner society. At the time of final hearing, the learned A.G.P. has not informed this Court that the respondents have no land to allot to the petitioner, if the present petition is allowed.

14. It is further contended by the learned counsel for the petitioner society that the claim of the petitioner society is not of simple individual person, the benefit of the claim will go to several members of the society. The authority is legally bound to accommodate and allot a part of land to every citizen if such demand is made. The petitioner society is doing work of public authority. It is highly improper on the part of the respondent authorities in interrupting the function of the petitioner society in stead of helping it by providing largest area after making deduction of smallest area for public purpose . Thus, the action of the respondent authorities is against the public policy. I do not find this contention of the learned counsel for the petitioner to be unreasonable.

15. In view of the above discussion, the impugned

order dated 21-3-2000 passed by the respondent no. 1 Principal Secretary is illegal, arbitrary, unreasonable and irrational as well as is not sustainable in the eye of law. The respondents authorities have failed to exercise their powers in considering properly the representations made by the petitioner society regarding deduction of land for the town planning scheme. Not only that, the impugned order is against and contrary to their own resolution No. 121/94-95 and Resolution No. 9 dated 21-2-1980, policy datd 15-4-1991 and violative of the order dated 29-1-1990 passed by the Division Bench of this Court in writ petition being Special Civil Application No. 2171 of 1979. As reduction was reduced to 23% from 30% in the matter of Special Civil Application No. 2171 of 1979 therefore, the petitioner society is entitled to the additional land after deducting 23% out of total area of the land admeasuring 20639 sq. mtrs. and the land of Naliya and road admeasuring 245 sq. mtrs., if any, will not be included in the additional land to be given to the petitioner society.

16. For the foregoing reasons, the present petition

succeeds and allowed. The respondent no. 1 is hereby directed to modify or alter the T.P. Scheme concerned and take necessary steps for giving additional land to the petitioner society after deducting 23% out of the entire land admeasuring 20639 sq. mtrs. after excluding the land of Naliya and Road admeasuring 245 sq. mtrs. if any, which will not form part of the deduction of 23% of the land of the petitioner, within a period of two months from the date of receipt of a certified copy of this order. In case the land is not available in the said T.P. Scheme, the authorities will give the land to the petitioner society in the nearby or adjacent to the same T.P. Scheme. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

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/JVSatwara/